

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
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Long-Term Telephone Number Portability)
Tariff Filings)
)

U S West Communications, Inc.)
Tariff F.C.C. No. 5, Transmittal No. 965)
)
)

CC Docket No. 95-116

PETITION TO REJECT OR SUSPEND TARIFF

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SUMMARY

U S West's local number portability ("LNP") filing is facially noncompliant with the Commission's orders, and accordingly should be rejected. At a minimum, the tariff raises substantial questions of lawfulness and should be suspended and set for investigation. Rejection or suspension is particularly appropriate in light of the fact that U S West's tariff suffers from many of the same flaws as the ILEC LNP tariffs that were suspended and set for investigation on January 29th, while U S West's proposed rates for queries, database dips and surcharges exceed the rates proposed in those previously suspended tariffs.

First, U S West fails to comply with the LNP Cost Classification Order's requirements governing recovery of OSS costs by seeking to include costs of modifications to billing, customer service, and other systems which that order expressly held are not "carrier-specific costs directly related to providing number portability." The recent order suspending previously filed LNP tariffs expressly noted that other ILECs' attempts to recover similarly improper OSS costs raised substantial questions of lawfulness warranting suspension and investigation, and that same result is clearly required here.

Second, U S West calculates its costs based on the years 1996-2004 -- nine years, rather than the five years authorized by the Commission.

Finally, AT&T's brief review of U S West's LNP tariff also revealed a variety of other flaws in its filings. Such obvious errors and omissions in the course of "streamlined" review counsel strongly in favor of the closer scrutiny possible in a full investigation.

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Pursuant to Section 1.773 of the Commission's Rules, 47 C.F.R. § 1.773, and the Procedural Order¹ issued on December 8, 1998, AT&T Corp. ("AT&T") hereby requests that the Commission reject, or suspend for one day and investigate the above-captioned tariff filing by U S West Communications, Inc. ("U S West") seeking to establish rates for local number portability ("LNP") query services and LNP end-user surcharges.

It is clear on the face of the instant filing that it fails to comply with the Commission's LNP orders, and accordingly it should be rejected.² At a minimum, the tariff raises substantial questions of lawfulness that cannot be dispelled in the highly abbreviated "streamlined" process afforded by this proceeding.

¹ Order, Long-Term Telephone Number Portability Tariff Filings, CC Docket No. 95-116, RM 8535 (released January 8, 1999) ("Procedural Order").

² A tariff is subject to rejection when it is prima facie unlawful, in that it demonstrably conflicts with the Communications Act or a Commission rule, regulation or order. See, e.g., American Broadcasting Companies, Inc. v. AT&T, 663 F.2d 133, 138 (D.C. Cir.

(footnote continued on next page)

The limited review afforded by this streamlined proceeding and the other ILEC tariff reviews that are ongoing represent the Commission's first opportunity to scrutinize ILECs' proposed end-user surcharges. It has been just slightly over one month since the Commission promulgated its LNP Cost Classification Order,³ which provided significant new guidance to ILECs seeking to recover their costs of implementing LNP. In light of the importance and complexity of LNP cost allocation, that order recognized that "the need to distinguish between eligible LNP costs and general upgrade costs will require that LECs provide substantially more detail in filing their [LNP] tariffs than is customary when filing new services tariffs under the price caps recovery mechanism."⁴ The Commission's caution is well-justified. In the earlier rounds of ILEC LNP query tariff filings and the investigations that followed them the ILECs failed even to make a serious attempt to carry their burden of proof.⁵ As the LNP Cost Classification Order found, "the cost support submitted with the initial query service tariffs filed by several ILECs was inadequate to enable the Commission, or interested parties, to ascertain that only eligible LNP

(footnote continued from previous page)

1980); MCI v. AT&T, 94 F.C.C.2d 332, 340-41 (1983). Suspension and investigation are appropriate where a tariff raises substantial issues of lawfulness. See AT&T (Transmittal No. 148), Memorandum Opinion and Order, FCC 84-421, released September 15, 1984; ITT (Transmittal No. 2191), 73 F.C.C.2d 709, 716, n.5 (1979) (citing AT&T (Wide Area Telecommunications Service), 46 F.C.C.2d 81, 86 (1974)).

³ Memorandum Opinion And Order, Telephone Number Portability Cost Classification Proceeding, CC Docket No. 95-116, RM 8535 (released December 14, 1998) ("LNP Cost Classification Order").

⁴ Id., ¶ 19.

⁵ 47 U.S.C. § 204(a)(1) makes plain that the ILECs bear the burden of proving the lawfulness of their tariff filings.

costs had been included in the end-user and query service charges."⁶ Accordingly, despite the long history of this proceeding, neither the Commission nor potential commenters have previously had a meaningful opportunity to evaluate ILECs' claimed LNP costs.

Against this backdrop, the Commission would be ill-advised to permit the instant tariff to take effect without the more complete review an investigation will allow.⁷ As the January 29th Suspension Order observed in suspending and setting for investigation five ILEC LNP tariffs: "The rate proposals and the issues raised in the tariff filings for long-term number portability are novel and complex."⁸ Indeed, by suspending almost every LNP query service and end-user surcharge tariff filed to date, the Commission implicitly has recognized that suspension is appropriate to ensure that any LNP query charges or end-user surcharges comply with its new cost recovery rules. Rejection or suspension is particularly appropriate in the instant case in light of the fact that U S West's proposed rates for queries, database dips and surcharges exceed those proposed in all of the ILEC tariffs suspended in last week's Suspension Order.

⁶ LNP Cost Classification Order, ¶ 19.

⁷ The importance of such review is heightened because, under the Commission's current interpretation of § 402 of the 1996 Act, if the instant tariff is not suspended carriers taking service pursuant to the tariff will have no effective right to damages in the event the instant filing later proves inconsistent with the Commission's orders. See Report and Order, Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996, CC Docket No. 96-187, FCC 97-23 (released January 31, 1997) ¶¶ 18-23.

⁸ Memorandum Opinion And Order, Long-Term Telephone Number Portability Tariff Filings of Ameritech, GSTC, GTOC, Pacific and Southwestern Bell, CC Docket No. 99-35 (released January 29, 1999) ("Suspension Order").

I. U S West Fails to Comply with the Commission's Requirements Concerning Recovery of OSS Costs.

The LNP Cost Classification Order imposed a two-part test to determine whether a cost purportedly incurred by an ILEC is in fact "directly related to the implementation and provision of telephone number portability," and therefore eligible for LNP cost recovery pursuant to the Commission's rules:

Under this test, to demonstrate that costs are eligible for recovery through the federal charges recovery mechanism, a carrier must show that these costs: (1) would not have been incurred by the carrier "but for" the implementation of number portability; *and* (2) were incurred "for the provision of" number portability service.⁹

The order made plain that under this test, ILECs may not seek to recover their costs to modify pre-ordering, ordering, maintenance and other systems that, while potentially affected by LNP, are not used to provide that service.

The Commission specifically rejected the proposition that eligible LNP costs include all costs that carriers incur as an "incidental consequence of number portability." For this reason, in submitting their tariffs, we require LECs to distinguish clearly costs incurred for narrowly defined portability functions from costs incurred to adapt other systems to implement LNP, such as repair and maintenance, billing, or order processing systems.¹⁰

Although U S West alleges that it did not seek to recover OSS costs that violate the LNP Cost Classification Order, its transmittal cannot be reconciled with that order's requirements. Pages 27-30 of U S West's D&J identify various systems, the costs of updating which U S West claims are properly recoverable. Included among these claimed expenses are modifications to systems that are used to, inter alia:

-- "support[U S West's] retail business" (Magic; D&J, p. 29)

⁹ LNP Cost Classification Order, ¶ 10.

¹⁰ Id., ¶ 12; see generally id., ¶¶ 8-14.

- "provide[] decision support information to customer contact personnel" (Consulting; D&J, p. 29)
- "manage service orders" (SOPAD, SOLAR, RSOLAR; D&J, p. 27)
- support "service negotiations and order entry" (Code Talker; D&J, p. 29)
- "receive[] and automatically activate[] service requests" (April 100s Block Mechanization, D&J; p. 30)
- "capture[] and store[] images of Letters of Authorization" (LOA Imaging and Storage; D&J, p. 30)
- "support[] service order forms inputs" (ROMS; D&J p. 30)
- "bill[] end user telephone subscribers for local service telephone products" (CRIS; D&J, p. 30), and
- win back customers lost to other carriers (Winback Database Lotus Forms; D&J, p. 30).

The functions U S West describes are not "costs carriers incur specifically in the provision of number portability services, such as for the querying of calls and the porting of telephone numbers from one carrier to another,"¹¹ and accordingly are not recoverable in its LNP surcharges or query charges.

U S West's claimed OSS charges plainly do not comport with the LNP Cost Classification Order's mandate that ILECs may recover only costs incurred "for the provision of," not simply as a result of, LNP. The Suspension Order expressly noted that other ILECs' attempts to recover similarly improper OSS costs raised substantial questions of lawfulness warranting suspension and investigation, and that same result is clearly required here.¹²

¹¹ Id., ¶ 12 (quoting LNP Cost Recovery Order, ¶ 72) (emphasis added); see also id., ¶ 26.

¹² See Suspension Order, ¶ 4.

II. U S West Impermissibly Attempts To Recover Nine Years Of LNP Expenses

The LNP Cost Classification Order provides that "Costs for end-user charges should be amortized over the five-year recovery period. We note that costs, such as maintenance, to be incurred after the five-year recovery period may not be included in eligible end-user costs."¹³ U S West, however, calculated its costs based on the years 1996 through 2004 -- nine years, rather than five. U S West's Chart 1 seeks to recover costs dating from 1996, and proposes to continue collecting investment and ongoing expenses into the year 2004. U S West increases its over-recovery by adding a "carrying charge" to its claimed expenditures for years prior to 1999.¹⁴ U S West's attempt to utilize a nine-year recovery period is improper and should be rejected.

III. Other Flaws In The LNP Tariffs Also Warrant Their Rejection Or Suspension

AT&T's brief review of U S West's LNP tariff also has revealed a variety of other flaws in that transmittal. Such obvious errors and omissions in the course of "streamlined" review counsel strongly in favor of the closer scrutiny possible in a full investigation.

Inclusion of General Overhead: U S West's D&J contends that it has not included "General Overhead" in its proposed rates.¹⁵ Despite this claim, however, U S West adjusted its direct costs of performing LNP queries by a factor that, in effect, works as a general overhead additive.

¹³ LNP Cost Classification Order, ¶ 51.

¹⁴ See U S West D&J, p. 14 ("advancement costs for LNP specific investment was included").

¹⁵ See Id., pp. 7-8 ("General Overheads have been removed for this tariff filing.")

Workpapers 7, 8 and 9 identify what U S West claims are its direct per-unit costs of default end office queries, database queries and default tandem queries. Workpaper 10 then identifies a factor which U S West applies to these costs in order to derive the actual rates charged. This factor is identified only as U S West's purported 1998 fully distributed costs divided by its purported long run incremental costs. The resulting factor, 1.89, is multiplied by U S West's claimed LNP costs to determine the rates USWC intends to bill for queries performed for other carriers. USWC does not even allege that the query rates that result are based on its incremental costs -- page 40 of its D&J simply states that:

The charges for query services are above direct cost as displayed in the Part 69 Expense Ratio Workpaper 10 attached.

U S West's methodology cannot be reconciled with the LNP Cost Classification Order's unequivocal instruction that

carriers may not use general overhead loading factors in calculating [LNP tariffs]. Instead, carriers may identify as carrier-specific costs directly related to providing long-term number portability only those incremental overheads that they can demonstrate they incurred specifically in the provision of long-term number portability.¹⁶

U S West does not appear to have included the same unsupported additive in calculating its end user surcharge rate. However, the Commission expressly rejected prior ILEC arguments that different standards should apply for recovery of overhead costs in query charges and surcharges:

We disagree, however, with Ameritech's proposal to use general allocation factors in identifying incremental overheads to be applied in identifying costs to be recovered through query service charges to other carriers. The *Third Report and Order* prohibited

¹⁶ LNP Cost Recovery Order, ¶ 74.

use of general overhead loading factors in identifying eligible LNP costs, and did not distinguish between end-user and query services charges in this respect.¹⁷

In addition, U S West's Workpaper 7 seeks to include in its costs for LNP query services "administrative" costs and "business fees." U S West's claimed costs for "administrative" expenses alone exceed Pacific Bell's most recent proposed LNP query rate. Despite the substantial size of these line items, U S West offers only a two-sentence description of its claimed "business fees" and "administrative" expenses.¹⁸ The information in U S West's transmittal is patently insufficient to permit either the Commission or commenters to confirm that these catch-all categories include only incremental expenditures directly related to LNP, as required by the LNP Cost Classification Order.

Tax Calculation: U S West's Chart 2B calculated a total required return of \$46,698,204. To determine the federal income tax recovery associated with that amount, U S West multiplied that total return figure by $[\text{tax rate}/(1-\text{tax rate})]$, using a marginal tax rate of 35%, yielding a federal tax recovery of \$25,145,186. As a result, while U S West uses a 35% federal tax rate, the federal tax it attempts to recover is 54% of its return -- a figure significantly higher than that claimed in the other ILEC LNP tariff filings to date (except Sprint's, which made the same error as U S West). This error also affects U S West's state and local income tax recoveries.

U S West may have arrived at these recovery amounts because it improperly assumed that it would owe taxes on its entire return. If U S West financed all its investments with equity and paid 35% federal taxes on the entire return and income tax recovery, its approach

¹⁷ LNP Cost Classification Order, ¶ 35.

¹⁸ U S West D&J, p. 37.

would provide an appropriate federal income tax recovery amount. However, U S West, like most companies, finances its investments, including LNP-related investments, with a combination of debt and equity -- that is, U S West's allowable return will be used to provide both returns to equity holders and interest payments on debt. Income taxes do not apply to the return paid to debt holders. In order to determine the true tax implications of its incremental LNP investments, U S West must first subtract the applicable debt interest created by these investments.

Other Impermissible Claimed Expenses: U S West's transmittal also seeks to recover a variety of other investments and expenses that do not satisfy the Commission's LNP cost recovery requirements, and/or are not adequately justified. First, page 24 of U S West's D&J states that:

Additional digital lines, trunking and point to point private lines are required in various instances in which end user customers move between different LSPs, including USWC. Problems with porting numbers in USWC switches make these additions attributable to LNP and 100% recoverable.

It is impossible to determine what "problems with porting numbers in USWC switches" make these claimed expenses necessary, or whether they are proper in any event. Nothing in U S West's description of these costs suggests that they are in fact costs of providing long-term LNP in the manner required by the Commission's orders.

Second, U S West seeks to include in its LNP tariffs costs related to winning or winning-back customers that have established service with other carriers:

USWC also negotiates service orders with end user customers who wish to return to USWC after changing local service providers, or who choose USWC after initially being service by another local provider. The costs of this function represents incremental service order negotiation time to process orders.¹⁹

¹⁹ Id., p. 32.

Nothing in the Commission's LNP orders authorizes recovery of such costs in LNP tariffs.

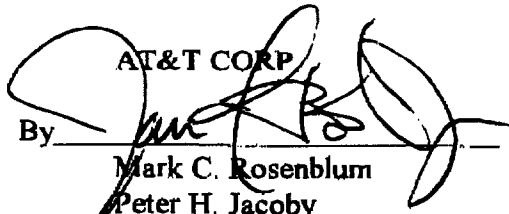
Finally U S West seeks to recover its costs to, inter alia, train six thousand of its "service and sales consultants" to discuss LNP with potential customers and place orders to port their numbers from other LECs to its own service, and to set up an Order Processing Center to handle that function.²⁰ While these appear to be charges that would not have been incurred "but for" LNP, they concern modifications of U S West's current manner of taking orders, responding to service inquiries, and otherwise interacting with customers and marketing its services, not the actual querying of calls or porting of numbers. Accordingly, these costs are not recoverable via LNP tariffs.

²⁰ See id., pp. 32-33.

CONCLUSION

For the reasons stated above, AT&T urges the Commission to reject or, alternatively, to suspend and investigate U S West's Transmittal No. 965.

Respectfully submitted,

AT&T CORP
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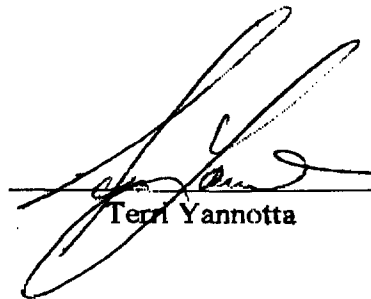
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February 2, 1999

CERTIFICATE OF SERVICE

I, Terri Yannotta, do hereby certify that on this 2nd day of February, 1999, a copy of the foregoing "Petition To Reject Or Suspend Tariff" was mailed by U.S. first class mail, postage prepaid, and sent via facsimile to the party listed below:

Ms. BB Nugent
U S West, Inc.
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Terri Yannotta

February 2, 1999